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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,424	02/11/2004	Thomas E. Gorsuch	TAN-2-1401.06.US	2889
24374 7590 01/29/2008 VOLPE AND KOENIG, P.C. DEPT. ICC UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			EXAMINER CONTEE, JOY KIMBERLY	
			ART UNIT 2617	PAPER NUMBER
			MAIL DATE 01/29/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/776,424	Applicant(s) GORSUCH ET AL.	
	Examiner Joy K. Contee	Art Unit 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3 and 37-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3 and 37-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/10/08</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 3 and 37-45 are rejected under 35 U.S.C. 102(e) as being anticipated by Foore et al. (Foore), US 2004/0180696.

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claim 3, Foore discloses a method for operating a CDMA user device comprising:

establishing a packet data communication session with a network, the packet data communication session being established in accordance with a protocol architecture comprising a plurality of layers including a physical layer(page 3 [0044-0045]);;

facilitating user by a CDMA transceiver of the CDMA user device of a data traffic channel and a control channel associated with the packet data communication session (page 2 [0016-0021]);

transmitting information indicative of a data rate associated with the data traffic channel on the control channel, wherein the control channel is not adapted to carry voice or data traffic(page 2 [0016-0021]);; and

maintaining a state of at least one of the plurality of protocol layers above the physical layer during the packet data communication session after the data traffic channel has been released(page 3 [0044-0045]);.

Regarding claim 37, Foore discloses the method of claim 3, wherein the control channel is transmitted to a base station in the network(page 2 [0016-0021]);.

Regarding claim 38, Foore discloses the method of claim 3, wherein the CDMA transceiver is operable to simultaneously transmit the data traffic channel and the control channel to a base station in the network(page 2 [0016-0021]);.

Regarding claim 39, Foore discloses the method of claim 3, wherein the data traffic channel carries voice information to a base station in the network(page 2 [0016-0021]);.

Regarding claim 40, Foore discloses the method of claim 3, wherein the data traffic channel and control channel are encoded with corresponding spreading codes(page 2 [0016-0021]).

Regarding claim 41, Foore discloses the method of claim 3, wherein the data rate varies over time(page 2 [0016-0021]).

Regarding claim 42, Foore discloses the method of claim 3, wherein the data traffic channel and the control channel operate within a 1.25 MHz bandwidth(page 2 [0016-0021]).

Regarding claim 43, Foore discloses the method of claim 3, wherein the plurality of protocol layers includes an application layer(page 2 [0016-0021]).

Regarding claim 44, Foore discloses the method of claim 3, further comprising deciding to request the data traffic channel based on a priority of service of packet data(page 2 [0016-0021]).

Regarding claim 45, Foore discloses the method of claim 3 further comprising deciding to request data traffic channel based on estimated data rate desired to transmit packet data(page 2 [0016-0021]).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joy K. Contee whose telephone number is 571.272.7906. The examiner can normally be reached on Monday through Friday, 5:30 a.m. to 2:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on 571.272.7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JC

  
JAY K. KONTEF  
PATENT EXAMINER